

Securities and Exchange Commission

§ 201.141

§ 201.120 *Ex parte* communications.

(a) Except to the extent required for the disposition of *ex parte* matters as authorized by law, the person presiding over an evidentiary hearing may not:

(1) Consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) Be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Commission.

(b) The Commission's code of behavior regarding *ex parte* communications between persons outside the Commission and decisional employees, 17 CFR 200.110 through 200.114, governs other prohibited communications during a proceeding conducted under the Rules of Practice.

§ 201.121 Separation of functions.

Any Commission officer, employee or agent engaged in the performance of investigative or prosecutorial functions for the Commission in a proceeding as defined in § 201.101(a) may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Commission review of the decision pursuant to Section 557 of the Administrative Procedure Act, 5 U.S.C. 557, except as a witness or counsel in the proceeding.

§ 201.140 Commission orders and decisions: Signature and availability.

(a) *Signature required.* All orders and decisions of the Commission shall be signed by the Secretary or any other person duly authorized by the Commission.

(b) *Availability for inspection.* Each order and decision shall be available for inspection by the public from the date of entry, unless the order or decision is nonpublic. A nonpublic order or decision shall be available for inspection by any person entitled to inspect it from the date of entry.

(c) *Date of entry of orders.* The date of entry of a Commission order shall be the date the order is signed. Such date shall be reflected in the caption of the order, or if there is no caption, in the order itself.

§ 201.141 Orders and decisions: Service of orders instituting proceedings and other orders and decisions.

(a) *Service of an order instituting proceedings—(1) By whom made.* The Secretary, or another duly authorized officer of the Commission, shall serve a copy of an order instituting proceedings on each person named in the order as a party. The Secretary may direct an interested division to assist in making service.

(2) *How made—(i) To individuals.* Notice of a proceeding shall be made to an individual by delivering a copy of the order instituting proceedings to the individual or to an agent authorized by appointment or by law to receive such notice. *Delivery* means—handing a copy of the order to the individual; or leaving a copy at the individual's office with a clerk or other person in charge thereof; or leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt; or giving confirmed telegraphic notice.

(ii) *To corporations or entities.* Notice of a proceeding shall be made to a person other than a natural person by delivering a copy of the order instituting proceedings to an officer, managing or general agent, or any other agent authorized by appointment or law to receive such notice, by any method specified in paragraph (a)(2)(i) of this section, or, in the case of an issuer of a class of securities registered with the Commission, by sending a copy of the order addressed to the most recent address shown on the entity's most recent filing with the Commission by U.S. Postal Service certified, registered, or Express Mail and obtaining a confirmation of attempted delivery.

(iii) *Upon persons registered with the Commission.* In addition to any other method of service specified in paragraph (a)(2) of this section, notice may be made to a person currently registered with the Commission as a broker, dealer, municipal securities dealer, government securities broker,

government securities dealer, investment adviser, investment company or transfer agent by sending a copy of the order addressed to the most recent business address shown on the person's registration form by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of attempted delivery.

(iv) *Upon persons in a foreign country.* Notice of a proceeding to a person in a foreign country may be made by any method specified in paragraph (a)(2) of this section, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country.

(v) *In stop order proceedings.* Notwithstanding any other provision of paragraph (a)(2) of this section, in proceedings pursuant to Sections 8 or 10 of the Securities Act of 1933, 15 U.S.C. 77h or 77j, or Sections 305 or 307 of the Trust Indenture Act of 1939, 15 U.S.C. 77eee or 77ggg, notice of the institution of proceedings shall be made by personal service or confirmed telegraphic notice, or a waiver obtain pursuant to paragraph (a)(4) of this section.

(vi) *To persons registered with self-regulatory organizations.* Notice of a proceeding shall be made to a person registered with a self-regulatory organization by any method specified in paragraph (a)(2)(i) of this section, or by sending a copy of the order addressed to the most recent address for the person shown in the Central Registration Depository by U.S. Postal Service certified, registered, or Express Mail and obtaining a confirmation of attempted delivery.

(3) *Record of service.* The Secretary shall maintain a record of service on parties (in hard copy or computerized format), identifying the party given notice, the method of service, the date of service, the address to which service was made, and the person who made service. If service is made in person, the certificate of service shall state, if available, the name of the individual to whom the order was given. If service is made by U.S. Postal Service certified or Express Mail, the Secretary shall maintain the confirmation of receipt or of attempted delivery. If service is made to an agent authorized by ap-

pointment to receive service, the certificate of service shall be accompanied by evidence of the appointment.

(4) *Waiver of service.* In lieu of service as set forth in paragraph (a)(2) of this section, the party may be provided a copy of the order instituting proceedings by first class mail or other reliable means if a waiver of service is obtained from the party and placed in the record.

(b) *Service of orders or decisions other than an order instituting proceedings.* Written orders or decisions issued by the Commission or by a hearing officer shall be served promptly on each party pursuant to any method of service authorized under paragraph (a) of this section or § 201.150(c)(1)–(3). Such orders or decisions may also be served by facsimile transmission if the party to be served has agreed to accept such service in a writing, signed by the party, and has provided the Commission with information concerning the facsimile machine telephone number and hours of facsimile machine operation. Service of orders or decisions by the Commission, including those entered pursuant to delegated authority, shall be made by the Secretary or, as authorized by the Secretary, by a member of an interested division. Service of orders or decisions issued by a hearing officer shall be made by the Secretary or the hearing officer.

[60 FR 32796, June 23, 1995, as amended at 69 FR 13176, Mar. 19, 2004; 70 FR 72569, Dec. 5, 2005]

§ 201.150 Service of papers by parties.

(a) *When required.* In every proceeding as defined in § 201.101(a), each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in the proceeding in accordance with the provisions of this section; provided, however, that absent an order to the contrary, no service shall be required for motions which may be heard *ex parte*.

(b) *Upon a person represented by counsel.* Whenever service is required to be made upon a person represented by counsel who has filed a notice of appearance pursuant to § 201.102, service shall be made pursuant to paragraph (c) of this section upon counsel, unless